IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 618 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHKUMAR PRABHUDAS PRAJAPATI

Versus

AGRICULTURAL PRODUCE MARKET COMMITTEE

Appearance: MR RJ OZA for Petitioner Nos. 1-2
MR SK JHAVERI for Respondent No. 1
Mr.Mankad, Assistant GOVERNMENT PLEADER,
for Respondent Nos. 2-4
RULE SERVED for Respondent No. 5
..... for Respondent No. 6-119

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/12/2002

ORAL JUDGEMENT

The petitioners are the original plaintiffs of Regular Civil Suit No.535 of 1997, which is filed in the Court of Civil Judge (Senior Division), Bhavnagar. The said suit is filed for a declaration that the notice issued by the Agricultural Produce Market Committee, Botad, at Mark 4/1, is illegal and without any authority of law. The plaintiffs have also prayed for a permanent injunction, restraining respondents 1 to 4 from implementing and operating the said notice in any manner.

The said suit has been filed in a representative capacity.

The case of the plaintiffs in the said suit is that the plaintiffs are the vendors of vegetables and other agricultural produce and they are selling their agricultural produce in the bazaar area of Botad Town. By filing the aforesaid suit, the petitioners have challenged the notice published by the Agricultural Produce Market Committee, Botad. It is the case of the plaintiffs that the respondent No.1-Market Committee has constituted a Market Committee for regulating the sale and purchase of cotton, cotton seeds and other agricultural produce. Thereafter, according to the plaintiffs, without following the due process of law and without giving any opportunity for raising necessary objections as regards inclusion of vegetables and fruits as agricultural produce, issued a notice, calling upon the farmers, traders, etc., dealing in the business of sale and purchase of vegetables and fruits, to obtain licence under the provisions of the Agricultural Produce Market Committee Act. It is also their say that the notice is issued without considering their objections. It is also the case of the plaintiffs that the action of the Market Committee will cause great inconvenience to the plaintiffs, as proper space may not be available to them in the market yard for doing their business activity.

Along with the suit, an application Exhibit 5 was also submitted for interim injunction, restraining the Market Committee from implementing the notice in question.

The trial court, initially, granted ad interim injunction, but, therafter, after hearing both the sides, vacated the same. The said order was challenged by way of appeal before the District Court, being Civil Miscellaneous Appeal No.85 of 1999. The appellate court, after hearing both the sides, came to the conclusion that the view of the trial court is correct, and that there is no prima facie case in favour of the plaintiffs. Ultimately, the appellate court, by its order dated 20.4.2000, dismissed the said appeal. The said decision of the appellate court is impugned in this revision application, which is filed under Section 115 of the Code of Civil Procedure.

At the time of hearing of this revision application, Mr.Oza, learned Advocate for the petitioners, argued that the procedure prescribed under

the Act is not followed and that the Director, Agricultural Produce Market Committee, Gandhinagar, without considering the objections of the plaintiffs, has issued the notification in question. According to him, since the objections were not taken into consideration, the Market Committee is not entitled to implement the public notice issued on the basis of the Notification issued by the Director.

I have heard Mr.R.J. Oza, for the petitioners, and Mr.S.K. Jhaveri, for the respondent No.1-Market Committee, as well as Mr.Mankad, learned AGP, for respondents 2, 3 and 4. It is required to be noted that the Notification in question was published on 11.9.1996, and the same was subsequently gazetted on 23.1.1997. It is also required to be noted that hearing was also afforded to the affected persons, who had lodged their objections in respect of the public notice. The Director, Agricultural Market Committee, State of Gujarat, Gandhinagar also gave personal hearing to the Objectors and the said fact is not in dispute. After hearing the objections of the objectors, ultimately, the Notification was issued by the Director on 11.9.1996. Even though personal hearing is not contemplated, yet, personal hearing was given. Since the objectors were already heard and since the said hearing preceded the issuance of the said Notification, it cannot be said that the procedure prescribed under the Act is not followed by the Director as the Notification was issued subsequently, i.e. on 11.9.1996, which was, subsequently, gazetted on 23.1.1997, and on the basis of the aforesaid Notification, the Market Committee has taken the impugned action.

Considering the aforesaid aspect, the order of the appellate court is not required to be interfered with by this Court. Even otherwise, this revision is filed under Section 115 of CPC and in view of the decision of the Apex Court, reported in AIR 1973 SC 76, it cannot be said that the appellate court has committed any error of jurisdiction while passing the impugned order. Therefore, it cannot be said that the courts below have committed any jurisdictional error which is required to be rectified by this Court in its limited jurisdiction under Section 115 of CPC.

Under the aforesaid circumstances, I do not find any substance in this revision application. The same is accordingly rejected. Rule is discharged with no order as to costs.

It is, however, clarified that the observations

made by this Court in this order may be taken as tentative observations. Similarly, the observations of the trial court as well as of the appellate court are of tentative nature only for the limited purpose of deciding the interim application. The suit is to be decided on its own merits and in accordance with law and without being influenced by the observations made by this Court or by the trial court or by the appellate court at the time of deciding the interim application.

At this stage, Mr.Oza for the petitioners requested for extension of interim relief. However, the Market Committee is deprived of proceeding further on the basis of the Notification in question and since I have taken the view that no relief can be given to the petitioners in this revision application, request for extension of interim relief is rejected.

(P.B. Majmudar, J.)

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(apj)